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| EXAMINER |
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WEINSTEIN, STEVEN L

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| ART UNIT | PAPER NUMBER |
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1794

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02/02/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |  |                                      |  |
|------------------------------|--|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/579,424   | <b>Applicant(s)</b><br>HOPKINS, GARY |  |
|                              | <b>Examiner</b><br>Steven L. Weinstein | <b>Art Unit</b><br>1794              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/10/07</u> . | 6) <input type="checkbox"/> Other: ____.  |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4,7 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuchenbecker (4,592,914).

In regard to claim 1, Kuchenbecker (4,592,914) discloses a microwave cooking device capable of crisping a food product, comprising an internal crisping container (i.e., and, for example, the tray #6) which includes an outer surface and an inner surface which inner and outer surface together defines a volume between them and wherein a susceptor is incorporated in said volume, wherein the internal container is constructed and arranged to enable moisture to escape the container during microwave cooking (since the inner container is open at the top), and an outer packaging (e.g., #4) capable of holding the internal container, the outer packaging defining at least one aperture constructed and arranged to enable moisture to escape the outer packaging during microwave cooking. In regard to claim 2, Kuchenbecker discloses the aperture is formed using one aperture forming strip ((e.g., #8). In regard to claim 3, Kuchenbecker discloses that the inner surface is coated with a susceptor film (e.g., a metallized polyester film). In regard to claim 4, Kuchenbecker discloses that the volume incorporates one discrete piece of susceptor film. In regard to claim 7, Kuchenbecker discloses that the container defines an opening (i.e., its top) which is capable of

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transferring the food product to and from the container. In regard to claim 12, Kuchenbecker discloses a method for crisping food during microwaving including: providing a microwave cooking device including an internal crisping container and an outer packaging, the internal crisping container incorporating a susceptor, wherein the internal crisping container is constructed and arranged to enable moisture to escape from the food contained therein, wherein the outer packaging includes at least one aperture-forming strip; peeling the at least one aperture forming strip to define an aperture for assisting moisture in escaping the microwave cooking device; placing the microwave cooking device in a microwave; and microwaving the food. This is all that claims 1-4,7, and 12 positively recite.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5,6, and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuchenbecker ('914) in view of Sasaki et al (4,835,352), Fong (5,177,332), Welles, (4,861,957), Flautt et al (4,268,738), and Fisher et al (4,911,938), further in view of Paulucci (6,168,812).

Claim 5 recites that the outer and inner surfaces of the internal crisping container defines at least one aperture. Although not recited in the claim, the aperture presumably relates to the broad recitation in claim 1 that the internal crisping container is

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“constructed and arranged” to enable moisture to escape, which was readable on an open container. How the container allows moisture to escape would have been an obvious function of the particular conventional container one had chosen to employ. As evidenced by Sasaki et al, Fong, and Welles, it was well established in the art to provide a crisping container that includes apertures precisely for applicants problem and solution. For example, Sasaki et al discloses that it is beneficial to provide a container, such as a packaging material, with a susceptor to impart crispiness to a food product, which would otherwise not become crispy during microwave heating. However, Sasaki et al also discloses that without apertures or perforations in the microwave susceptor packaging material, moisture cannot escape, and the food product would become soggy. Fong and Welles are further evidence of apertured, microwave susceptor packaging material, wherein the apertures are provided for venting, Fisher et al is relied on as further evidence of employing a moisture escape means in a microwave susceptor packaging (albeit, venting seals rather than apertures) for the same purpose, i.e., to prevent sogginess, and Flautt et al is relied on as further evidence of the generic concept of providing apertures in a microwavable package to allow venting so that the food does not become too moist. To modify Kuchenbecker and substitute one conventional crisping container for another conventional crisping container, i.e., to substitute for a susceptor containing, open tray container, a susceptor containing, enclosing flexible bag type container with apertures for venting, would therefore have been an obvious matter of choice and/or design, and to some degree, an obvious function of the conventional food to be packaged and heated. Paulucci is only being

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relied on as further evidence that applicant was not the first to provide a vented bag within an outer carton. Paulucci incorporates the susceptor within the bag, but the art taken as a whole already discloses that susceptors can be incorporated as part of the inner container/bag itself. In regard to claim 6, Sasaki et al (4,835,352), Fong (5,177,332), Welles, (4,861,957), Flautt et al (4,268,738), and Fisher et al (4,911,938), all disclose the apertures are smaller than the food. In regard to claims 8-11, the particular conventional bag structure employed is seen to have been an obvious matter of choice and/or design. Bags having sealed openings, such as are formed in conventional form, fill seal packaging, are notoriously conventional, whereas Sasaki et al (4,835,352) appears to employ a sealed tubular container, Fong (5,177,332) discloses pouches as does Welles, (4,861,957) and Flautt et al (4,268,738).

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fong (5,177,332), in view of Welles, (4,861,957), and Sasaki et al (4,835,352), further in view of Flautt et al (4,268,738), and Fisher et al (4,911,938), further in view of Kuchenbecker ('914) and Paulucci (6,168,812).

In regard to claim 1, Fong discloses a crisping container including an outer surface and an inner surface defining a volume therein, wherein a susceptor is incorporated in the volume defined by the crisping container, and wherein the crisping container is constructed and arranged (e.g., by employing apertures) to enable moisture to escape the crisping container during microwave cooking. Sasaki et al is relied on as further evidence that it was well established in the art to provide a crisping container

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that includes apertures precisely for applicants problem and solution. For example, Sasaki et al discloses that it was beneficial to provide a container, such as a packaging material, with a susceptor to impart crispiness to a food product, which would otherwise not become crispy during microwave heating. However, Sasaki et al also discloses that without apertures or perforations in the microwave susceptor packaging material, moisture cannot escape, and the food product would become soggy. Welles is relied on as further evidence of apertured, microwave susceptor packaging material, wherein the apertures are provided for venting, Fisher et al is relied on as further evidence of employing a moisture escape means in a microwave susceptor packaging (albeit, venting seals rather than apertures) for the same purpose, i.e., to prevent sogginess, and Flautt et al is relied on as further evidence of the generic concept of providing apertures in a microwavable package to allow venting so that the food does not become too moist. Claim 1 differs from Fong (5,177,332), as further evidenced by Welles, (4,861,957), Sasaki et al (4,835,352), Flautt et al (4,268,738), and Fisher et al (4,911,938), in the recitation of an outer packaging that is capable of holding the crisping container and wherein the outer packaging defines at least one aperture constructed and arranged to enable moisture to escape from the outer packaging during microwave cooking. Kuchenbecker ('914) and Paulucci (6,168,812) are relied on to teach it was well established to provide an outer packaging to enclose a microwavable, susceptor-containing, inner container for mercantile purposes. Both references teach the outer container can be employed during shipping and display and the microwavable, susceptor-containing, inner container can least one aperture be exposed to microwave

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heating while in the pouter packaging. Kuchenbecker also discloses that the outer packaging defines at least one aperture and Paulucci discloses the inner bag can be vented. To modify Fong (5,177,332), as further evidenced by Welles, (4,861,957), Sasaki et al (4,835,352), Flautt et al (4,268,738), and Fisher et al (4,911,938) and employ an outer container for its art recognized and applicants intended function would therefore have been obvious. Claims 2-11 are rejected for the reasons given above, applying the teachings of the art for the reasons given above. In regard to the method claim 12, the method recited is seen to have been the obvious method of using the recited structure, which recited structure is shown to have been obvious by the references applied and for the reasons given above. That is, the art taken as a whole discloses it would have been obvious provide a microwave cooking device including an internal crisping container and an outer packaging, the internal crisping container incorporating a susceptor, wherein the internal crisping container is constructed and arranged to enable moisture to escape from the food contained therein, wherein the outer packaging includes at least one aperture-forming strip; peel the at least one aperture forming strip to define an aperture for assisting moisture in escaping the microwave cooking device; place the microwave cooking device in a microwave; and microwave the food.

The remainder of the references cited on the PTO892 forms are cited as art of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-



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272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M-3:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/  
Primary Examiner, Art Unit 1794